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In the
Supreme Court of the United States
OCTOBER TERM, 1973

No. 73-1485

THE CHOCTAW NATION and THE CHICKASAW NATION,
Petitioners,

VERSUS

STATE OF OKLAHOMA and THE COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

STATEMENT OF CASE

The petitioners complain of an order entered on February 6, 1973 by the United States District Court for the Eastern District of Oklahoma.

This order approved the accounting made by the Commissioners of the Land Office of the State of Oklahoma showing receipts derived from lands constituting the Arkansas River bed in the total amount of $786,541.67. Further, the order disapproved offsets claimed by the Commissioners of the Land Office in the amount of $59,125.05.

In addition, the order also recited that "it would be inequitable" to require the State to account for and deposit with the court the monies received as interest, and disallowed any credits to the Commissioners of the Land Office for administrative expenses in connection therewith.

ISSUE

WHETHER THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA ERRED IN REFUSING, UPON LEGAL AND EQUITABLE GROUNDS, TO REQUIRE THE COMMISSIONERS OF THE LAND OFFICE FOR THE STATE OF OKLAHOMA TO ACCOUNT FOR AND PAY INTO COURT INTEREST ON RECEIPTS COLLECTED BY IT FROM LANDS CONSTITUTING THE RIVER BED OF THE ARKANSAS RIVER, WHICH RECEIPTS WERE LATER DETERMINED TO BELONG TO PETITIONERS AND OTHERS.

REASONS FOR DENYING THE WRIT

As to the merits of this case there appear to be no viable issues not raised in the Tenth Circuit. As to the exposition of the applicable law and proper interpretation of that law, the State of Oklahoma and the Commissioners of the Land Office of the State of Oklahoma cannot improve upon the opinion rendered by the United States Court of Appeals, Tenth Circuit, in Case No. 73-1447. This opinion is attached as an exhibit to the Choctaws' and Chickasaws' Petition for a Writ of Certiorari. The State of Oklahoma and the Commissioners of the Land Office respectfully request this Court to read and accept the opinion of the Tenth Circuit Court as the argument of the State of Oklahoma and the Commissioners of the Land Office in this case.

The only issue not fully covered in the opinion in Case No. 73-1447 is the unadorned conclusion of the Choctaw Nation and the Chickasaw Nation that "The decision of the Tenth Circuit is a major erosion of the due process clause of the Fourteenth Amendment." No valid argument is given to support this premise nor do we believe that any facts or reasons to support such a dogmatic statement exist. In this respect we would refer once again to the argument as posed by the Tenth Circuit opinion in Case No. 73-1447, page VII, *et seq.*, of the brief submitted to this Honorable Court by the attorney for the Chickasaws and Choctaws. We would like to place particular emphasis on the Tenth Circuit's interpretation of the differences between "Brunson the First," the *Warden* case and "Brunson the Second," and further submit that only "Brunson the Second" had an analogous fact situation to the case at bar.

We further submit that an examination of the brief of the Choctaws and Chickasaws does not cite a single case nor even give an applicable reason in support of granting a writ of certiorari that meets the criteria of Rule 19 of this Court.

CONCLUSION

The state of Oklahoma and the Commissioners of the Land Office submit that nothing has been presented by the Choctaws and the Chickasaws that would warrant entertainment by this Court of a writ of certiorari.

The Commissioners of the Land Office of the State of Oklahoma, as trustee of an inviolable trust for the common schools of the State of Oklahoma, collected monies for sand and gravel and oil and gas leases from lands lying within the navigable portion of the Arkansas River. This was done in good faith and under the law as it was perceived to be at the time said funds were collected. These funds were commingled with other funds and invested at varying rates of interest throughout the years. Acting under the law then existing, the Commissioners of the Land Office distributed the income from these commingled funds to the common schools in all counties of the State of Oklahoma on a per pupil basis for each county. It is impossible to determine with any degree of accuracy the exact amount that was earned in interest income and even more impossible to determine how much income from river bed money was distributed to the individual school systems. There exists no vehicle for the State of Oklahoma to recover back from the counties the monies paid to them for common school purposes. The Commissioners of the Land Office are forbidden by law to diminish the corpus of the trust. There is no other fund controlled by the Commissioners of the Land Office from which such interest could be paid. The State believes that it would be inequitable for the Court to direct it to pay nonexistent, illusory funds to the petitioners. If the Court

follows the rule laid down in the *Commissioners of the Land Office* v. *Brunson,* 51 P.2d 500, and holds that the petitioners have not proved the existence of such a fund, there can be no recovery, and, in that event, the Commissioners of the Land Office believe that the principles of justice and equity will be best served.

Respectfully submitted,

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May, 1974

CERTIFICATE OF MAILING

This is to certify that I mailed three true copies of the foregoing instrument to which this certification is attached, to the following named counsel of record:

Kile and Rabon
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MAY 17 1974

R. R. WILLIAMSON, JR.